

DISTRICT JUDGE ROBERT J. BRYAN
MAGISTRATE JUDGE KAREN L. STROMBOM

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MICHAEL JOSEPH BRADY,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

NO. C11-6020 RJB/KLS

RESPONSE TO MOTIONS TO
AMEND HABEAS PETITION
AND TO LIFT STAY

The Respondent respectfully submits this response to Mr. Brady's motions above.

I. STATEMENT OF THE CASE

Mr. Brady filed a federal habeas corpus petition in this Court. *See* Dkt. No. 1. He also filed a motion for stay and abeyance of his petition. *See* Dkt. No. 9. The Respondent filed a response opposing Mr. Brady's motion to stay, as well as a motion to dismiss his petition without prejudice. *See* Dkt. No. 10. On March 6, 2012, this Court issued an Order directing the parties to submit further briefing in the case. *See* Dkt. No. 12. The Court specifically directed the parties to provide further information relating to (1) the status of Mr. Brady's pending personal restraint petitions that challenged his state court convictions; (2) Mr. Brady's deadline to file his federal habeas petition; and (3) the status of the Washington State courts' determination of the timeliness of his personal restraint petitions. *See* Dkt. No. 12, at 1. The Respondent submitted a response to the Court's Order, as did Mr. Brady. *See* Dkt. Nos. 13 and 14. The Court subsequently granted a stay in Mr.

1 Brady's case, denied the Respondent's motion to dismiss, and directed Mr. Brady to file
 2 status reports as to the pendency of his pending state court cases in Cause Nos. 86589-2,
 3 86640-6, and 86856-5. *See* Dkt. No. 15. Mr. Brady filed the requisite status reports and
 4 relevant certificates of finality. *See* Dkt. Nos. 16-20 and 22. His last status report noted
 5 that a certificate of finality has now been issued as to his last pending state petition, in
 6 Washington Supreme Court Cause No. 86856-5. *See* Dkt. No. 20.

7 Mr. Brady has now filed a motion to amend his habeas petition, which already listed
 8 34 habeas claims, and seeks to add two additional claims, Claims 35 and 36. *See* Dkt. No.
 9 21. He also requests that the Court lift the stay that it previously entered on March 29,
 10 2012.

11 The Respondent does not oppose the motion to lift the Court's stay, but respectfully
 12 requests that the Court defer ruling on the motion to amend until the Respondent has had a
 13 complete opportunity to thoroughly review the entirety of Mr. Brady's petition, what
 14 appears to be his **11 state court personal restraint petitions**, and his proposed Claims 35
 15 and 36 in relation to the rulings issued by the State courts as to those proposed claims.

16 II. DISCUSSION

17 A. The Respondent Respectfully Requests That This Court Defer Ruling On Mr. 18 Brady's Motion To Amend His Petition Until The Respondent Has Filed Her Answer To His Habeas Petition

19 Mr. Brady's motion to amend his habeas petition by adding two additional claims
 20 should be deferred until the Respondent files her answer to his habeas petition. The
 21 Respondent will address in the answer whether Mr. Brady's motion to amend should be
 22 granted or denied. If the Respondent determines it should be denied, her answer will
 23 discuss her position as to why denial is appropriate. If the Respondent finds that the
 24 motion should be granted, her answer will reflect that concession, and will address
 25 proposed Claims 35 and 36 in the manner that Respondent believes to be appropriate.
 26 Therefore, until the Respondent has had a complete opportunity to thoroughly review the

entirety of Mr. Brady's petition, what appears to be his 11 state court personal restraint petitions, and his proposed Claims 35 and 36 in relation to the rulings issued by the state courts as to those proposed claims, the Respondent respectfully requests that the Court defer its ruling as to the motion to amend.

B. Because Mr. Brady's Habeas Petition Currently Presents 34 Claims, The 45-Day Time Period In Which The Respondent Is Currently Required To File Her Answer To His Petition Will Be Woefully Inadequate

At present, Mr. Brady's habeas petition lists 34 claims. If the Court grants his motion to amend his habeas petition, his petition will then present 36 claims. Prior to granting Mr. Brady's motion to stay and abey his habeas petition, this Court issued an Order Directing Service that directed the Respondent to file her answer to Mr. Brady's habeas petition within 45 days after being served with the petition. *See* Dkt. No. 3, at 1. The 45-day time period is customarily sufficient to obtain the necessary state court files and file an answer to a federal habeas petition. When the Court subsequently granted Mr. Brady's motion to stay, the Court directed that the Respondent would be allowed 45 days in which to file her answer to his petition after the stay was lifted. *See* Dkt. No. 15, at 3.

During the pendency of the stay, the Respondent conducted a preliminary review of Mr. Brady's habeas petition and some of the many pleadings in the state court files as to what appears to be Mr. Brady's 11 state court petitions. An answer to 34 habeas claims, or potentially, 36 claims, will undoubtedly require a far greater amount of time than the customary 45-day time period, given that many habeas petitions, for example, present fewer than 10 claims. Thus, a 45-day response period would be a woefully inadequate period of time in which to file an adequate answer to his petition.

Moreover, in addition to Respondent's counsel's other numerous caseload commitments that will require answers over the next few months, Respondent's counsel will be out of the office between November 17 – November 26, 2012, and anticipates also being out of the office between December 24, 2012 – January 3, 2013.

Therefore, after this Court lifts the stay in Mr. Brady's case, the Respondent respectfully requests that the Court modify its earlier order in Dkt. No. 15 that allowed 45 days to file the answer to his habeas petition. Instead, the Respondent requests that the Court permit the Respondent until March 1, 2013 to file her answer to Mr. Brady's petition. The Respondent understands that the March 1, 2013 deadline is lengthy, but submits that based on the above, reasonable and appropriate. Mr. Brady sought a stay in January 2012 so that he could complete litigation as to three pending state court petitions, while knowing that it would take months to complete such litigation. Therefore, he cannot credibly claim at this time that the Respondent's request for a March 1, 2013 deadline is excessive.

III. CONCLUSION

The Respondent respectfully requests that this Court defer ruling on Mr. Brady's motion to amend his habeas petition, does not oppose lifting the stay, and that the Respondent be permitted until March 1, 2013 to file her answer to Mr. Brady's habeas petition.

RESPECTFULLY SUBMITTED this 7th day of November, 2012.

ROBERT M. MCKENNA
Attorney General

s/ Gregory J. Rosen
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CERTIFICATE OF SERVICE

I certify that on the date indicated below I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system. I further certify that I have mailed by United States Postal Service, postage pre-paid, a true and correct copy of the foregoing document to the following non CM/ECF participants:

MICHAEL JOSEPH BRADY, DOC #847662
AIRWAY HEIGHTS CORRECTIONS CENTER
PO BOX 2049
AIRWAY HEIGHTS WA 99001-1899

EXECUTED this 7th day of November, 2012, at Olympia, Washington.

s/ Karen Bailey
KAREN BAILEY
Legal Assistant